IN THE

Supreme Court of the United States

October Term, 1967

NO. 363

UNITED STATES OF AMERICA AND
FEDERAL COMMUNICATIONS COMMISSION, *PETITIONERS,*

v.

SOUTHWESTERN CABLE CO., MISSION CABLE TV, INC.,
PACIFIC VIDEO CABLE CO. AND TRANS-VIDEO CORP., *RESPONDENTS.*

NO. 428.

MIDWEST TELEVISION, INC., SAN DIEGO TELECASTERS, INC.,
AND JACK O. GROSS, *PETITIONERS,*

v.

SOUTHWESTERN CABLE CO., MISSION CABLE TV, INC., PACIFIC
VIDEO CABLE CO. AND TRANS-VIDEO CORP., *RESPONDENTS.*

On Writ of Certiorari to the
United States Court of Appeals for the
Ninth Circuit

OBJECTION TO MOTION FOR LEAVE TO FILE A BRIEF FOR THE ALL-CHANNEL TELEVISION SOCIETY AS AMICUS CURIAE

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Southwestern Cable Co., Mission Cable TV, Inc., Pacific Video Cable Co. and Trans-Video Corp., Respondents in Cases No. 363 and 428, hereby object to the Motion of The All-Channel Television Society (ACTS) for leave to file an *amicus curiae* brief in these cases and respectfully request that it be

denied. As ACTS correctly states in its Motion (p. ii), Respondents have refused ACTS' request for consent to file such a brief.

REASONS FOR WITHHOLDING CONSENT

Respondents do not believe that ACTS will submit an *amicus curiae* brief addressed to any question presented by these cases.[1] The only questions before this Court are the following: First, whether the Federal Communications Commission possesses authority under the Communications Act of 1934, as amended, to regulate operations of community antenna television (CATV) systems; second, whether such authority, if possessed, encompasses the power to issue a temporary stay order maintaining the *status quo* pending an evidentiary hearing to determine the impact on local television stations from the distribution of television signals by a CATV system. In the ACTS motion the dimensions of these cases are ignored; the Court is not here faced, as ACTS claims, with a question of upholding ". . . the Commission's CATV *regulations* . . ." and it will not be required to find that ". . . the *regulations* adopted are [or are not] authorized by [the Communications Act of 1934]." (Motion, p. ii, emphasis supplied). ACTS disclaims any intention to brief the question of Commission jurisdiction, or the question of the Commission's authority to issue a temporary stay, but proposes instead to brief a new question it has raised – whether ". . . the regulations adopted are authorized by that Act." The "regulations

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[1] ACTS has in fact filed its brief in a single bound volume with its motion for leave to file. Respondents do not believe it would be proper to consider the brief in ruling on the motion, and will not refer to the content herein.

adopted" are many and complex and, with the single exception of the questioned power to issue an interim order in the nature of a stay, are not involved in these cases, and were not before the Court of Appeals for the Ninth Circuit.

ACTS claims that it ". . . can contribute to the Court's resolution of the issues by focusing particularly on the impact of the regulated CATV activities on the television structure being fostered by the Commission . . ." and that ". . . it is in a position to show the impact of the regulated CATV activities on development of UHF broadcast stations . . . ." (Motion, p. iii) necessarily comprehend arguments, not only irrelevant to the two questions presented, but based on material not of record in these cases.

ACTS' implicit admission that it wishes to try a factual matter before this Court would alone make its Motion objectionable. What is even more objectionable, however, is that the questions presented to this Court do not even arise from the factual dispute ACTS wishes this Court to try. Indeed, the second question actually before the Court can be restated: To inquire whether the Commission has the power to maintain the *status quo* while holding an evidentiary hearing to determine whether the evidence which ACTS assumes exists does, in fact, exist.

The ACTS Motion does not allege that there are facts of record or questions of law within the dimensions of the questions presented which will not be presented or will be inadequately presented by the Petitioners. Moreover, the ACTS Motion does not allege that there is a question of law which has not been presented and which is relevant to the dispostion of these cases.[2] The Motion very simply misstates the

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[2] ACTS has not shown that it, as an organization, or any of its individual members, are interested in any other case or administrative

(continued)

questions presented and then indicates a desire to argue facts not of record and not provable without a full evidentiary hearing.

Thus, the Motion for Leave to file an *Amicus Curiae* brief submitted by ACTS fails to comply with Rule 42.3 of the Court and should be denied.

Respectfully submitted,

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2 (continued)
hearing which will be affected by the decision on the questions presented in this case. Furthermore, even if ACTS or its members would be affected by the decision on the Commission's jurisdiction, which ACTS views as the ". . . central issue. . ." in these cases (Motion, p. ii), it has specifically disavowed any intention to brief that point, as noted above. Inasmuch as Petitioners and ACTS appear to have viewpoints which coincide, and Petitioners are represented by competent counsel, leave to file should be denied. *Northern Securities Company v. United States*, 191 U.S. 555, 48 L.Ed. 299 (1903).